IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12595 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUO-MOTU-PROCEEDING - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

SUO MOTU for Petitioner(s) : 1,
MR.SUNIT SHAH, GP, WITH MR. VIPUL MISTRY, AGP for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.
MR JB PARDIWALA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 27/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE JAYANT PATEL)

1. The larger question which arises for

consideration of the Court is the reinvestment of all the various fixed deposits lying in various Courts and the Tribunals of the State including this Court on account of increase of the rate of interest of the nationalized Bank and other banks as per the relaxation given by the Reserve Bank of India to such banks.

2. The single bench of this Court (Coram: Jayant Patel,J.) in suo-motu exercise of the powers at initial stage had an occasion to independently consider such question in the proceedings of Civil Application No. 5947 of 2007 arising in First Appeal No. 9938 of 2005 and it was inter alia observed as under:

> "It deserves to be recorded that from the record of the present application as well as from the record of another Civil Application No.5668 of 2007, which came to be considered by this Court on 17.04.2007, during the period of 2003 to 2006, the prevailing rates of interest of the nationalised Banks were between 5.5% to 6.5% p.a. for FDR up to five years. It is on account of the impugned orders passed by

this Court in various appeals, which have been entertained during the aforesaid period, the Tribunal has invested the amount with the various nationalised Banks in the State. The consequence of such investment made is that the claimant or the Insurance Company, as the case may be, would be entitled to the interest between 5.5% to 6.5% p.a. only. At present, the prevailing rate of interest in the Fixed Deposit Receipt with all nationalised Bank is 8.5% to 9.5% p.a. for the period exceeding one year. Therefore, there is a rise in the rate of interest in the Fixed Deposit Receipt of about 3% per annum. It appears to the Court that the investment made by the concerned Tribunal pursuant to the interim order during the period of 2003 to 2006 may be running into crores of rupees and consequently, those who are legitimately entitled to the interest would get lesser rate of interest between 5.5% to 6.5% p.a. as against the prevailing rate of interest of 8.5% to 9.5% p.a. It is only on account of non-availability of the order passed by

this Court or the Tribunal, as the case may be, such deposits running into crores of accrue about 3% less interest per annum.

Prima facie it appears to the Court that benefit of such rise in the prevailing rate of interest on the fixed deposit of about 3% p.a. over the investment running into crores of rupees should be made available to the claimant or the insurance company, as the case may be, and the same appears to be in the larger interest of the litigating class generally whose money is invested in the Fixed Deposit Receipt and the matters are subjudice before this Court.

Similar can be the situation even in respect of investments made by various Tribunals Gujarat State functioning under the Motor Accident Act on account of the Award passed by it for which, no appeals are preferred before this Court. It prima facie appears that this Court having the power of superintendence under Article 227 of the Constitution over all Courts and Tribunals throughout in the territories of its jurisdiction, which is Gujarat State, can

consider the matter for passing appropriate order and instructions to the concerned Tribunal for encashment of such deposits which is to earn the interest @ 5.5% to 6.5% p.a. and to reinvest the same at the prevailing rate of interest of 8.5% to 9.5% so as to ensure that the benefit of rise of interest @ 3% reaches to the claimant and the litigating class generally in the cases which have arisen under Motor Vehicles Act, 1988, throughout in the State and the investments are made during the aforesaid period of 2003 to 2006.

Similar can be the situation even in the investment made with the nationalised bank in the First Appeals arising under the Land Acquisition Act and the investment made pursuant to the interim orders passed in the proceedings of First Appeals, during the aforesaid period of 2003 to 2006.

Therefore, prima facie it appears that the matter is required to be considered suo motu by this Court in exercise of its power under Article 226 of the Constitution for the purpose of passing appropriate general

order for encashment of the deposit at a lower rate of interest between 5.5% to 6.5% p.a. and simultaneous renewal of such fixed deposits on the prevailing rate of interest between 8.5% to 9.5% p.a. with all nationalised Banks in respect of which the matters are pending before this Court in the appellate jurisdiction under Motor Vehicles Act,1988 or with the Tribunal under the Motor Vehicles Act, 1988 or appellate jurisdiction of this Court under Land Acquisition Act.

In view of the aforesaid reasons recorded, prima facie it is a case to exercise power suo motu under Article 226 and 227 of the Constitution of India and all interested, if they are desirous to make appropriate representation or submission will have to be heard by this Court before issuing final direction in this regard."

3. Thereafter the matter is assigned to the Division Bench of this Court pursuant to the order passed by the Honourable Chief Justice on administrative side. On 11.05.2007, the order

was passed by this Court with a view to give an opportunity to the affected persons and suggestions, if any, of interested persons in the general interest of the litigating class or the practical difficulty which may arise in the event any directions are to be issued. The order reads as under:

> "1. It appears that even in the Gujarat Samachar, Ahmedabad edition, on 09.05.2007, various interest rates prevailing, are published, which reads as under:
>
> ***1. Bank of India:-***
>
> *Deposit period of 400 Days*
> *Rate of interest-9.50%*
>
> ***2. Bank of Rajasthan:-***
>
> *Deposit period of 15 months,*
> *On deposit amount upto Rs. 15 Lakhs,*
> *Rate of interest - 10%.*
>
> ***3. Bank of Baroda:-***
>
> *Deposit period of 3 years*
> *On minimum deposit of Rs.25,000/-,*
> *Rate of interest- 9%.*
>
> ***4. A.B.N. Amro Bank:-***
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> *Deposit period of 188 days or 400 days*
> *Rate of interest-10.25%.*
>
> ***5. Canara Bank:-***
>
> *Deposit period of 1 year*
> *On minimum deposit of Rs.10,000/-,*
> *Rate of interest - 9.50%.*
>
> ***6. Central Bank:-***

Deposit period of 555 days
Rate of interest - 9.25%.

7. ***Centurian Bank*** *:-*

Deposit period of 1 to 3 year
Deposit amount upto 15 Lakhs
Rate of interest - 9.25%.

8. Corporation Bank:-

Deposit period of 18 months to 2 years
For deposit upto 15 Lakhs

9. Development Credit Bank:-

Deposit period of 569 to 869 days
Interest rate - 9.75%

10.HDFC Bank:-

Deposit period of 30 months,
Deposit of less than Rs. 10 Lakhs,
Rate of interest - 9%.

Deposit of Rs. 10 Lakhs & more
Rate of interest - 9.25%.

11.ICICI Bank:-

Deposit period of 390, 590 & 890 days,
Deposit of Rs. 15 Lakhs or more than 15 Lakhs
Interest on the deposit made for 4 to 5 years,
the interest rate is the same.

12.IDBI Bank:-

Deposit period of 360 days
On deposit of minimum 10,000/-,
Rate of interest rate - 9%

Deposit period of 800 days
Rate of interest - 9.50%.

13.Indian Overseas Bank:-

Deposit period of 18 to 42 months,
on deposit of Rs.5,000/- to 25 Lakhs
Rate of interest - 9% and

Deposit period of 42 months and more
Rate of interest - 9.25%.

14.Indsind Bank:-

Deposit period of 10 days

On deposit of less than Rs. 15 Lakhs,
Interest rate - 10%.

Deposit period of 1 to 2 years
On deposit of less than Rs. 15 Lakhs,
Interest rate - 9.25%.

Deposit period of 2 years and more
on deposit of less than Rs. 15 Lakhs
Interest rate is 9.50%.

15.Kotak Mahindra Bank:-

Deposit period 1 to 3 years
Rate of interest - 9.75%.

Deposit period of more than 3 years
Rate of interest - 10%.

16.Oriental Bank of Commerce:-

Deposit period of 300 days
On Deposit of minimum 10,000/-
Rate of interest - 9.50%.

17.Punjab National Bank:-

Deposit period of 1 to 2 years
On deposit of Rs.25,000/-
Rate of interest - 9.50%.

18.State Bank:-

Deposit period of 4 to 5 years
On deposit of Rs.10,000/-,
Interest rate - 9.50%.

19.UCO Bank :-

Deposit period of 3 years
On deposit of Rs.25,000/-
Interest rate - 9.10%.

20.Union Bank:-

For deposit period of 400 days
On deposit of Rs.10,000/-
Rate of interest - 9%.

Deposit period of 500 days
Rate of interest - 9.50%.

21.Vijaya Bank:-

Deposit period of 1 to 2 years
Rate of interest - 9.50 %.

22.Yes Bank :-

Deposit period of 6 months, 1 year, 2 year or 5 year
Rate of interest - 8.25 % to 9.25%.

Such rate of interest appears to be even higher in certain cases, exceeding 8.5% to 9.5%.

2. Further, as the matter is pertaining to large number of claim petitions decided and in respect of whom the appeals are pending before this Court, it may not be possible to issue individual notices and to consider the view or the response. However, the concerned Tribunal can put the notice on the conspicuous part of the notice board at the Court premises, intimating about the consideration of the present matter before this Court and after the view or the suggestion, if any, or the remarks, if any, are invited, the matter can be considered further.
3. Since the issue is touching to the administration of Motor Accident Claims Tribunal and Reference Courts under the Land Acquisition Act, and as larger public interest is involved of various type of claimants and other litigating class generally, the State of Gujarat as well as the Registrar General of High Court would be required to be heard.

4. Hence, issue ***Notice*** returnable on 22nd June,

2007 at 2.15 P.M. to :

1) The State of Gujarat
to be served through
the Secretary,
Revenue Department,
Sachivalaya, Gandhinagar

2) The State of Gujarat
to be served through
Ports and Transportation
Department,
Sachivalaya, Gandhinagar

3) The Registrar General,
High Court of Gujarat,
Ahmedabad

5. It is further directed that the Secretary, Revenue Department of the State Government as well as the Secretary, Port and Transportation Department of the State of Gujarat shall ensure that a general public notice is published on or before 31.05.2007 in one newspaper having wide circulation in Gujarat State in Gujarat language intimating about the pendency of the present matter and if any party or litigant or lawyer is interested to make submissions on the next returnable date, the same may be made accordingly.

6. The Registrar General of the High Court shall ensure that the prima facie reasons recorded and the present order is communicated to each Principal District Judge and Motor Accident Claims Tribunal(Main) functioning in each District

of Gujarat State for information to all Motor Accidents Claim Tribunal functioning in such districts and the Reference Court functioning under the Land Acquisition Act.

7. It is further directed that the Principal District Judge/Motor Accident Claims Tribunal (Main) shall place such information in the notice board of the Tribunal concerned/Reference Court concerned under the Land Acquisition Act, inviting submissions or suggestions, if any, by giving time of 15 days, to the lawyers/litigants of the said district. The Tribunal/Reference Court shall forward suggestion/submission, if any received, pursuant to the aforesaid notice, and shall also submit its own remarks, if any, on practical aspects or otherwise, which may be required to be considered in the event, the matter is considered by this Court for encashment of existing Fixed Deposits and the reinvestment of all such deposits at the prevailing rate of interest.

Office to supply copy of the order to the Government Pleader Office for communication to the concerned Secretary of the Government."

4. Mr.Sunit Shah, learned GP, with Mr. Vipul Mistry, learned AGP placed on record the copy of the advertisement issued in Gujarat Samachar,

daily newspaper having circulation in Gujarat State in its edition dated 13.06.2007 pursuant to the direction of this Court vide para 5 of the order dated 11.05.2007. He has also placed on record another advertisement issued in Gujarat Samachar dated 05.06.2007 intimating general public about the proceedings of the present case and the suggestions or the comments if any to the submitted to this Court in this regard. Therefore it appears that direction No. 5 issued pursuant to the order dated 11.05.2007 for giving opportunity to the general public by publication in the newspaper is complied with by the concerned officers of the State Government namely Secretary Revenue Department of the State Government as well as Secretary, Ports and Transport Department of State of Gujarat.

5. It may be recorded that pursuant to the aforesaid public notice, none has come forward to oppose or to resist. The learned Government Pleader as well as Learned A.G.P. have appeared but have submitted that the State Government shall accept direction if any issued by this court in the larger public interest of the litigating class generally and also of the State

Government individually in the matters where monies are lying as an investment in the reference Court under the Land Acquisition Act or the Tribunal as the case may be.

6. Mr. Pardiwala, learned Counsel appearing for the Registrar General of the High Court has appeared and placed on record the communication dated 25.05.2007 intimating all Principal District Judge/Motor Accident Claim Tribunal, for the order passed by this Court as well as to comply the directions issued by this Court vide paragraph No. 6 and 7 of the order dated 11.05.2007. Mr. Pardiwala, learned Counsel on behalf of the Registrar General of the High Court has also declared before this Court that so far as the direction issued for placing information in the Notice Board of the Tribunal concerned/reference Court concerned under the Land Acquisition Act, for inviting submissions or suggestions, if any, by giving time of 15 days, to the lawyers/all litigants of the said district is concerned, the same has been complied with and except the comments received from Shri B.U. Joshi, Registrar (Vigilance), Shri B.S. Thakkar, Judge Small Causes Court,

Shri V.P. Patel, Deputy Director Gujarat State Judicial Academy and Shri Jaman K. Bhandari, advocate practicing at Jamnagar, no other suggestions or objections or any comments are received.

7. In the remarks forwarded by Shri. B.U. Joshi, Registrar (Vigilance) it appears that the principle submission is that at the time of reinvestment, the rules of RBI in this regard are required to be considered. In the remarks forwarded by Shri B.S.Thakkar, Judge, Small Causes Court there is indication of heavy penal charge being recovered by financial institution. Shri V.P. Patel, Deputy Director Gujarat State Judicial Academy has brought to the notice of this Court general orders passed by the High Court for making investment of the amount lying with the registry of this Court including that such order will cover all cases pending before the single bench as well as before the Division Bench of this Court in which amounts are lying un-invested with the registry. It is also stated that as per the said order, the investment shall be made for 3 years in the first instance, extendable from time to time till order of

release is passed by this Court. It is also suggested that crores of rupees except amounts invested in the FDR at the instance of the parties are being deposited with this Court and the amount is being deposited in the Current Account which earns no interest. Therefore such amount be deposited in the Savings Bank Account and bargaining for the rate of interest be made for Savings Bank Account at the highest level with the nationalized Bank. The another suggestion made is that the interest accrued in the Savings Bank Account be used for infrastructure facilities, Legal Aid or other public welfare for strengthening the judicial capability. One advocate Mr. Bhandari has made submission, but the same pertains to the grievance raised for non permitting disbursement of the amount in individual case, more particularly in case of Land Reference Case No. 306 of 1983 and others.

8. Mr. Pardiwala, learned Counsel representing Registrar General of the High Court has submitted that the directions for reinvestment at the prevailing rate of interest would generally be in the larger interest of the

person whose monies are invested. Further he submitted that the bank may be deducting certain amount in the event the FDRs are encashed prematurely and therefore, with a view to see that the loss may not be caused to those persons whose money is invested on account of the premature encashment and reinvestment at the prevailing rate of interest, some reasonable period may be provided namely that fixed deposits are not getting matured within a period of 3 months to 6 months, etc.

9. It appears that when investment is made in the FDR, normally premature encashment is permissible and rules of RBI would not prohibit such premature encashment unless the investment order is made with the specific condition of lock-in period and prohibiting premature encashment. It may be that while premature encashment as per the terms and condition of the investment, the bank may reduce the rate of interest but it may vary from facts to facts of each case. Generally RBI rules do not prohibit the premature encashment of the fix deposit receipt, more particularly like the investment made in the banks pursuant to the interim or

final order passed by this Court or by any Court or Tribunal.

10. It appears that there is no dispute on the rise in the rate of interest as were then prevailing during the period of year 2003 to 2006 and now prevailing in the year 2007. The prima facie reasons recorded by this Court (single bench Coram: Jayant Patel,J.) reproduced hereinabove read with the order dated 11.05.2007 passed by this Court makes the aforesaid aspect amply clear. Even if the minimum rate of interest as prevailing of the nationalized Banks are considered, it is about 9.5 percent. Therefore, it becomes established fact that if reinvestment is made in the fixed deposit receipts of the amount which were invested during the period of the year 2003 to 2006 at the prevailing rate of interest, such investment would accrue higher rate of interest of about 3 percent per annum. The claimants or the concerned persons whose money/ies are lying pursuant to the order of the Court or Tribunal, are legitimately entitled to such higher rate of interest. It is on account of nonavailability of the specific orders in each individual cases, the court or the Tribunal

have not taken steps of reinvestment of such amount at the prevailing rate of interest, so as to make it available to the person concerned or the litigant concerned who is entitled to the interest of such investment. This court in its supervisory jurisdiction under Article 227 of the Constitution read with article 226 of the Constitution, would be zealous to see that the benefit of such rise in the interest should and would go to the litigant whose money is invested and the appropriate action deserves to be taken also to curtail or avoid the loss of interest to any litigant or person whose money is invested pursuant to the order passed by the Court or Tribunal in the State of Gujarat on account of no orders passed by such Court or Tribunal, may be on the ground that no proper application is moved in individual case or that individual litigant for petty amount, may not come forward with the proper application or the litigant concerned may have no means sufficient for moving appropriate application or for any reason beyond the control of such litigant or person. It appears that in such circumstances this Court is clothed with the power under the

Constitution to issue general direction for ensuring the situation to make benefit available to the person who are legitimately entitled for the rise of interest in the investment with the nationalised Bank or such other banks, made pursuant to orders passed by the Court or Tribunal in the State of Gujarat. No further reasons may be required to be recorded on the aforesaid aspects in view of the provision of Article 226 and 227 of the Constitution.

11. The aspect which may result on account of premature encashment deserves consideration. As such, during the period when the prevailing rate of interest were on much lower side i.e. 5.5 percent to 6.5 percent, there may not be clause for reduction of the interest but with a view to balance the situation and no serious loss is caused and in future the earning of interest in such investment is reasonably procured on higher side, some restriction can be provided even at the time when reinvestment is to be made by the Court or the Tribunal in the State.

12. The comments submitted by Shri B.S. Thakkar, Judge, Small Causes Court appears to be out of subject matter of the present proceedings.

Further, the submission made by Shri V.P. Patel, Deputy Director Gujarat State Judicial Academy, though appears to be in larger interest of earning more monetary income of interest from the amount lying in the Current Account of the High Court, can be considered only if such policy of depositing amount is available in the Savings Bank Account. Further whether by continuing the Current Bank Account the surplus amount by giving specific instruction can be transmitted to the fix deposit receipt account of the High Court or not are essentially to be worked out by concerned department of the High Court and it would be for the Registrar General of the High Court to explore such possibilities by giving suggestion to the nationalised Banks in which the normal bank account are being operated by High Court or Court or the Tribunal.

13. It deserves to be recorded there is already general order passed by this Court (Coram: Honourable the Chief Justice Bhawani Singh (As his lordships was then)and H.K. Rathod, J.) dated 07.07.2004 for directing registry to make investment and it has been submitted on behalf of the Registrar General of the High Court that

such direction is being complied with for making investment in the FDRs. In our view the same reasonably takes care of no loss of interest on account of non availability of the orders in individual cases in various litigation pending before this Court pursuant to which the amount have been deposited in view of general order passed by Division Bench of this Court comprising of the Honourable the Chief Justice on 07.07.2004, however the aspect of reinvestment shall remain even in such investment by issuing suitable direction to realise benefit of rise in the rate of interest and to make it available to the litigants whose money/ies are invested.

14. In view of the aforesaid observations and discussions it appears to this Court that the appropriate directions deserve to be issued and hence are issued as under:

1) All concerned Courts under the Land Acquisition Act and all Motor Accident Claim Tribunals functioning under the Motor Vehicle Act in the State of Gujarat, shall undertake the exercise of premature encashment of all investment made

during the period of 2003 to 2006 at the rate of 5.5 percent to 6.5 percent and shall make reinvestment with the same nationalised Bank and the same branch at the prevailing rate of interest in the Fixed Deposit Receipts for the period of 5 years. The reinvestment shall be made at the prevailing rate of interest for the period of 5 years unless by specific order passed earlier in concerned case/es the period of investment is lesser than period of 5 years. In such cases specific period provided for investment by specific order shall be respected and reinvestment shall be limited to that period only.

2) The aforesaid direction for reinvestment shall not be required to be complied with by the reference Court or the Tribunal concerned in the State Government, if investment already made, is to attain maturity within a period of 6 months from today. Otherwise the direction shall apply in all such investment already made for the purpose of reinvestment.

3) Concerned Court or the Tribunal, as the case may be, shall comply with the direction of premature

investment and reinvest on the prevailing rate of interest as indicated hereinabove at the earliest but in any case within a period of 2 months from the receipt of the order of this Court.

4) The Registrar General of this Court is directed to communicate the copy of this order and he is further directed to ensure that the direction issued by this Court are complied with by the concerned Court or Tribunal, as the case may be, within aforesaid stipulated period.

5) The direction given as per item no. 1 to 3 for premature eacashment and reinvestment at the prevailing rate shall also be made applicable by the Registrar General of this Court, to all the investment already made by Registry/office of this Court. The Registrar General of this Court shall ensure proper compliance of the directions at the earliest but in any case within two months from the receipt of the order.

6) The Registrar General of this Court in consultation with nationalised bank of S.B.I shall explore the possibilities of transferring the surplus amount lying in the Current Bank

Account in separate Fix Deposit Receipt or continuous automatic transfer in the investment account for avoiding the loss of interest on amount lying in the current account exceeding the normal requirement of balance. Such exercise shall be undertaken and completed preferably within a period of 6 months from the receipt of the order of this Court.

Before parting with, we record appreciation to the positive response on the part of the State Government as well as Registrar General, High Court, for larger interest of the litigant in the State and other who are directly or indirectly concerned in the better administration for making the benefits available to the legitimately deserving classes or the litigant/person individually.

Petition is allowed to the aforesaid extent. Rule made absolute accordingly.

(JAYANT PATEL,J.)

(H.B.ANTANI,J.)

Suresh*